

State through Supdtt., Central Jail

Vs

Charulata Joshi

Criminal Appeal No. 718 of 1996

(G.B. Pattanaik, M.B. Shah JJ)

13.04.1999

JUDGMENT

G.B. Pattanaik, J.

1. Competing rights, namely, right of press to interview a prisoner in jail and right of jail authorities prohibiting such interview arise for consideration in the present appeal. One Babloo Srivastava, who is in judicial custody and is being tried for offence under Section 302 read with Section 120-B had been lodged in Tihar Jail. The news magazine 'India Today' moved an application before the Additional Sessions Judge, Delhi seeking permission to interview the under-trial prisoner in jail. The learned Sessions Judge by his order dated 6.11.95 granted the permission sought for. Being aggrieved by the aforesaid order the prosecuting agency moved the High Court in Revision. By the impugned order dated 1st May, 1996, the High Court did not interfere with the order of the learned Sessions Judge granting permission but modified the same by issuing the following directions :-

"However, it is made clear that the interview and/or photographs of Babloo Srivastava would be taken only if he expressed his willingness and not otherwise. If given, the respondent newsmagazine is expected to publish the interview with a sense of propriety and balance and without offending the law of contempt of Courts or impairing the administration of justice."

The aforesaid order is being challenged in this appeal. The learned counsel appearing for the appellant strenuously argued that the learned Additional Sessions Judge, had no jurisdiction to issue the permission in question and the order itself indicates that the learned Sessions Judge had passed the order mechanically without application of mind. He had also contended that though the High Court had modified the said order yet the right of the Jail Authorities to deny interview for good reasons has been conceded by this Court in *Smt. Prabha Dutt v. Union of India and others, 1982(1) Supreme Court Cases 1*, and therefore, the High Court was not justified in issuing the impugned order. The learned counsel for the respondents on the other hand contended that there is no provisions in the Jail Manual prohibiting interviews of the undertrial prisoners. In the absence of such prohibition the Right of Press, as engrafted in Article 19(1)(a) cannot be curtailed though the learned counsel urged that while granting permission the Court may put such conditions as it thinks fit in the interest of administration of justice. The learned counsel also urged that the High Court has considered all the germane factors and has modified the order of the learned Sessions Judge, and therefore, there is no infirmity with the order of the High Court so as to be interfered with.

2. At the outset we take up the issue regarding the authority of the learned Sessions Judge in granting permission. As it appears, the accused is an under-trial prisoner and the case is pending in

the Court of the learned Additional Sessions Judge who had granted the order of permission. The trial of the accused being pending before the Additional Sessions Judge it cannot be said that he had no authority to issue permission to the Press to interview the under-trial inside the jail. We, therefore, do not find any substance in the argument of the learned counsel for the appellant appearing in this Court.

3. Coming to the second limb of the objections raised by the learned counsel appearing for the appellant, there cannot be any dispute with the proposition that the order granting permission to the Press to interview an under-trial cannot be passed mechanically without application of mind. Inasmuch as the Court granting permission will have to weigh the competing interest between the right of a Press and the right of the Authorities prohibiting such interview in the interest of administration of justice. The Court, therefore, before disposing of an application seeking permission to interview an under-trial in jail must notice the jail authorities and find out whether there can be any justifiable and weighty reasons denying such interviews. The Court also should try to find out whether any restrictions or prohibitions are contained in the Jail Manual. The so called permission granted by the Court would be subject to the relevant Rules and Regulations contained in the Jail Manual dealing with the rights and liabilities of the under-trial prisoners. In *Smt. Prabha's case* (supra) this Court had observed that the Constitutional Right to Freedom of Speech and Expression conferred by Article 10(1)(a) of the Constitution which includes the Freedom of Press is not an absolute right and does not confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. The Court also in the aforesaid case expressed the opinion that the Press must first obtain the willingness of the person sought to be interviewed and no Court can pass any order if the person to be interviewed expresses his unwillingness. It was also indicated in the aforesaid judgment that the so called right of the Press which it obtains on the basis of a permission from the Court would be subject to the prohibitions of the Jail Manual.

4. In *Sheela Barse v. State of Maharashtra, 1987(2) R.C.R. (Crl.) 438 : 1987(4) Supreme Court Cases 373*, this Court also considered the Right of Press under Article 19(1)(a), the Right of the Prisoners under Article 21 and reasonable restrictions which can be put on such interviews. It was also observed that the interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has to be controlled and regulated and the Pressmen are not entitled to uncontrolled interview. It was also stated that those who receive permission to have interviews will have to agree to abide by reasonable restrictions as contained in the Jail Manual, and therefore, permission granted by the Court would be subject to provisions contained in the Jail Manual itself.

5. Bearing in mind the ratio in the aforesaid two judgments of this Court if we examine the order of the learned Additional Sessions Judge it can be said without hesitation that the said learned Additional Sessions Judge disposed of the application seeking permission to interview by passing a blanket order without applying his mind and without even knowing the mind of the authorities and without bearing in mind the law laid down by this Court in the aforesaid two decisions. No Court would pass such a blanket order mechanically without applying its mind to the relevant factors, as the Press does not have an unfettered right to interview an under-trial prisoner in jail. When we examine the impugned order of the High Court we find that the High Court did bear in mind the ratio of the aforesaid two decisions of this Court and, therefore, while granting permission to interview the under-trial prisoners it modified the blanket order passed by the learned Sessions

Judge putting such restrictions and conditions as contained in the impugned order. No grievance, therefore, can be made to the impugned order of the High Court. But after hearing the learned counsel for the parties we may add a further condition that the interview which the Press would take will be regulated by the provisions contained in Jail Manual and, therefore, the Jail Authorities can modulate the same in accordance with the provisions contained in the Jail Manual. In the course of hearing it was pointed out to us that the said under-trial prisoner is no longer in Tihar Jail and we do not know whether the News Magazine still intends to interview the said under-trial prisoner. In the event the Magazine still intends to interview the under-trial prisoner then he must approach the appropriate Jail Authorities where the said under-trial prisoner has been lodged and those Authorities will bear in mind the conditions put by the High Court and the observations made by us in this judgment before allowing the interview in question.

6. This appeal is disposed of with the aforesaid directions and observations.

Appeal disposed of.